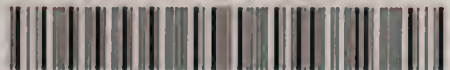


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# Annual Report 1978

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- 1978 -

## Massachusetts Commission on Indian Affairs

Commonwealth of Massachusetts  
Michael S. Dukakis, Governor

Department of Community Affairs  
William G. Flynn, Secretary

Commission on Indian Affairs  
Jacob Thompson, Executive Director





# *The Commonwealth of Massachusetts*

## *Commission on Indian Affairs*

*John W. McCormack Building  
One Ashburton Place — Rm. 1004*

*Boston, Mass. 02108*

*Telephone 617-727-6394*

MICHAEL S. DUKAKIS

Governor

WILLIAM G. FLYNN

Secretary

JACOB THOMPSON

Executive Director

His Excellency  
Michael S. Dukakis  
Governor of the Commonwealth of Massachusetts  
State House, Room 360  
Boston, Massachusetts 02133

Dear Governor Dukakis:

The following Annual Report covers the activities of the Commission on Indian Affairs for the year 1978.

While the progress and achievements of the Commission have been slowly treading forward, the Commission has been rewarded thus far with its most productive year in reaching its projected priorities and goals.

We extend our gratitude to you and hope in the next fiscal year we will accomplish even more.

Sincerely,

*Jacob Thompson*  
Jacob Thompson

JT/c-js







REPORT  
of the  
MASSACHUSETTS COMMISSION ON INDIAN AFFAIRS  
FOR THE YEAR 1978

McCormack State Office Building  
One Ashburton Place  
Room 1004  
Boston, Massachusetts 02108



TABLE OF CONTENTS

INTRODUCTION	PAGE 1
MASSACHUSETTS GENERAL LAW CHAPTER 7 SECTION 38	PAGE 2
BUDGET	PAGE 3
EDUCATION	PAGE 3
HOUSING	PAGE 3
HUNTING & FISHING	PAGE 4
MORATORIUM ON GRAVE DIGGING	PAGE 4
EMPLOYMENT: C.E.T.A.	PAGE 4
HUMAN SERVICES	PAGE 7
FUNDING	PAGE 7
NATIONAL LEGISLATION	PAGE 8

ATTACHMENTS:

ATTACHMENT #1 -- EDUCATION BILL	
ATTACHMENT #2 -- HOUSING BILL	
ATTACHMENT #3 -- HUNTING & FISHING RIGHTS BILL	
ATTACHMENT #4 -- FIVE YEAR MORATORIUM ON EXCAVATION	
ATTACHMENT #5 -- NATIONAL CETA READER ARTICLE	
ATTACHMENT #6 -- EXPLANATION OF PROVISIONS OF THE INDIAN CHILD WELFARE ACT OF 1978 (PL 95-608)	





## INTRODUCTION

The Massachusetts Commission on Indian Affairs was established by an Act of Legislation (see following page) and officially sworn into office November 1974 with a mandate to assist the Native American Indian population of the Commonwealth in their dealings with State and local governments and provide assistance to Tribal Councils, Inter-Tribal Organizations and American Indian individuals in their needs, concerns and affairs. Membership of the Commission consists of seven Commissioners and one staff person, the Executive Director.

In compliance with Chapter 7, Section 39 of the General Laws of the Commonwealth of Massachusetts, the following Annual Report is submitted consisting of the activities of the Commission on Indian Affairs during the 1978 calendar year.

Although hampered by lack of State appropriations, the Commission has taken several positive directions in the areas of education, human services, administration, housing, employment, state and federal legislation, and has established positive relationships with the State Legislature, state agencies, federal agencies, Congressional people, and National Tribal Governments and Organizations. The Commission has, to the best of its ability, maintained its deep commitment to its Native American constituency in providing technical assistance and referral assistance to Tribal Councils, Inter-Tribal Organizations and Native individuals.





THE COMMONWEALTH OF MASSACHUSETTS

*In the Year One Thousand Nine Hundred and Seventy-four*

AN ACT ESTABLISHING THE COMMISSION ON INDIAN AFFAIRS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 7 of the General Laws is hereby amended by adding after section 37 the following section:-

Section 38. There shall be in the executive office of administration and finance a commission on Indian affairs, consisting of seven members who shall be appointed by the governor. All of the members shall be of American Indian descent and shall represent the major tribes of American Indian population located within the commonwealth. Each member shall serve for a term of three years.

Said commission shall meet at least four times annually, but may meet as often as it deems necessary for the proper conduct of its affairs, and shall elect from its membership a chairman and such other officers as may be required, each to serve for a term of one year.


Said commission shall investigate problems common to American Indians and persons of American Indian descent who are residents of the commonwealth. It shall assist tribal councils, Indian organizations and individuals in their relationship with agencies of state and local government, assist with social services, education, employment opportunities, health, housing problems, civil rights, legal aid, treaties, taking of a census of Indian residents, and any other rights or services concerning Indian residents of the commonwealth.

Said commission may make recommendations to the secretary of administration and finance concerning programs and policies that will best serve the interest of the Indian residents of the commonwealth and shall make an annual report of its activities to the said secretary and file a copy thereof with the clerks of the senate and house of representatives on or before the last Wednesday in January of each year.

House of Representatives, July 22, 1974.

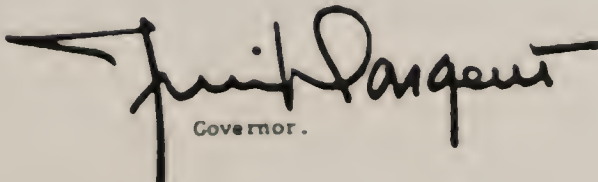
Passed to be enacted,  Speaker.

In Senate, July 22, 1974.

Passed to be enacted,  Acting President.

August 2, 1974.

Approved,

  
Governor.



## BUDGET

The approved State budget for the Massachusetts Commission on Indian Affairs for fiscal year 1978 was \$39,500.00.

## EDUCATION (Attachment #1)

The Commission has refiled the Education Bill (formerly numbered H108) to establish 30 full tuition scholarships for Native Americans residing in the Commonwealth.

Last year, the Bill was approved by the Committee on Education but was killed in the Committee on Ways and Means for the reason that the Board of Higher Education refused to support it. It is standard procedure for the Committee to seek an opinion from the Board on bills dealing with scholarship programs. The Board's policy is to oppose scholarship bills that single out specific groups, for they argue that their existing programs fulfill the needs of all low-income families. However, eligible Native American students for scholarships are most often unfairly subjected to the competition for scholarship funds with larger groups of other disadvantaged and minority students, a circumstance which prevents potential Indian students from attending institutions of higher learning.

## HOUSING (Attachment #2)

The Massachusetts Commission on Indian Affairs has





refiled "An Act to Establish Indian Housing Authorities"  
(formerly numbered H107).

HUNTING & FISHING (Attachment #3)

The Commission has refiled the Hunting & Fishing Bill which would provide free hunting, fishing and trapping rights to resident Indians of Massachusetts. This bill was formerly numbered H110.

MORATORIUM ON GRAVE DIGGING (Attachment #4)

The Commission has refiled the Moratorium Bill (formerly numbered H109) designed to call for a five year moratorium on excavation of known Indian Burial Grounds.

EMPLOYMENT: C.E.T.A.

The Comprehensive Employment and Training Act Program (CETA) is funded by the United States Department of Labor to provide job training and employment opportunities for the unemployed, under-employed and economically disadvantaged. In mid-November 1977, two persons were placed in the Commission Office for job training. Their employment terms expired mid-November 1978. A third CETA employee was added to the Commission Office during the first week of February 1978, employment term to expire February 1979.





(A) General Clerical Worker and Legislative Advocate:

Under the direction of the Commission Director, this CETA worker was introduced to general office procedure and was given and performed such tasks as filing, telephone reception and light typing. This worker was also introduced to legislative advocacy procedures such as attending organization meetings of the private and political sectors with the purpose of introducing these citizens to the special problems and legislative efforts of the Indian population, explaining the necessity and ramifications of Indian Affairs bills presently before the state legislature, and obtaining the support and commitment of these groups and individuals.

(B) Liaison Person:

Under the direction of the Commission Director, this CETA worker was introduced to the general procedures in being the office liaison with other state agencies and departments. It was also this person's responsibility to finalize the Indian Census. In this capacity, the CETA worker learned basic computer operation and how to read and compile, in a coherent fashion, statistical data.

As the liaison, this person participated in meetings with different state agencies to the end of obtaining commitments from the respective agencies to provide technical assistance and technical training to the Tribal Councils and Inter-Tribal Organizations, as it was needed, to aid these groups in



the realization of desired programs.

The liaison served as the Commission's representative to the State Energy and Weatherization Board. Through this relationship, the groundwork was laid whereby Indian People benefitted by the Weatherization Programs of some of the Community Action Agencies in the weatherization of some Indian homes as well as by the acquisition of Indian desks in some areas serviced by this agency having significant Indian populations.

(C) Resource Development Specialist:

Under the direction of the Commission Director, this CETA worker was introduced to the basic procedures of resource development. It was this person's responsibility to communicate with the Indian population, specifically through the Tribal Councils and Inter-Tribal Organizations, to identify the needs and the problems in the Indian community and then return with this information to seek potential remedies through state and federal agencies. Cooperation with the Liaison person was fundamental in most cases.

Through the joint efforts of these two workers, an Indian Desk was established in the Greater Lawrence Community Action Agency to provide human services to the Indian population residing within that Agency's jurisdiction. This arrangement was unique in that it was the first of its kind in the state. (See Attachment #5, The National CETA Reader, Vol. 1 No. 7, June/July 1978.) Other Indian Desks have been established





in Fall River and Brockton. We are in the process of establishing Indian Desks in other Community Action Agencies where there is a large Indian population.

#### HUMAN SERVICES

The Commission on Indian Affairs in conjunction and cooperation with the Governor's Human Services Office has served approximately eighty-seven Native American persons on recommendation from the Director of the Indian Commission.

#### FUNDING

The Commission suffers a severe handicap from the lack of appropriations from the Commonwealth. Because of this status, the Commission has served in a referral capacity to the Tribal Councils, Inter-Tribal Organizations and Indian individuals seeking assistance, and represented Native Americans in dealing with State and local authorities. However, because of its critically low funded status, the Commission must continue to rely on emergency employment acts (i.e. CETA) to fund staff salaries on a short term basis. Presently, the only position now state funded is of the Executive Director. Through the approval of the 1978 budget, the Commission did acquire a second state funded position. However, it never became operable in 1978. Hopefully, this position will be released for hiring by early 1979.



NATIONAL LEGISLATION (Attachment #6)

In April 1977, the Commission began work on the Indian Child Welfare Act of 1977, a project which was to last until November 8, 1978 when the Act was signed as Public Law 95-608.

PL 95-608 was designed to effectively stop the illegal and immoral taking of Indian Children from their families, relatives, reservations and Indian communities, a practice which has been perpetrated by the federal government (to further its policy of assimilation and destruction of Indian culture) through Bureau of Indian Affairs social workers, as well as by private and religious charitable and adoption agencies. This Act protects the cultural and human rights of our Children, their parents and their Indian Nations, returning the legal jurisdiction of these Children to their parents and ultimately to the Indian Nations. In addition to these legal protections, it also affords funding for Indian run adoptive agencies, further helping to insure that should an Indian Child need adoptive or foster parents, those parents will be of the same Nations as the Child, or, at the very least, Indian People. The Act also provides funding for home improvement and other social oriented programs which help to provide an environment conducive to positive child rearing.

The Commission was in constant contact with Washington, D.C. keeping up to date with every new development of the Act. It organized a nationwide support campaign of letter writing,





gathering support from Tribal Governments, Indian People and organizations, as well as from non-Indian people and organizations. Washington was flooded with letters of support at every important turn of PL 95-608's journey through the legislative system.

The Commission was responsible for certain accepted amendments to the original Act making it applicable to all Indian Children within the territorial boundaries of the United States, expanding the Act's original intent of protecting only the members of the federally recognized Indian Nations. These amendments were accomplished by arguing points with the members of the Senate Select Committee on Indian Affairs at the initiation of the Act. Similar points had to be argued again when the Act came to the House of Representatives, and again, the Commission was successful, with the tremendous support constantly coming from the Indian and non-Indian public.

The Commission wishes to thank the Tribal Councils, Indian Organizations and individuals nationwide who all pulled together for so long and with such consistency as to reverse the long-time practice of alienating our Children from their own People. We wish to thank the friendly non-Indian people across the country who recognized the immorality of this practice and came to our aid at the appropriate time. We wish to thank Senator Kennedy and Senator Brooke for their timely assistance both at the beginning and the conclusion of this effort. We wish to thank Speaker O'Neill for his generous assistance and very close atten-



tion to PL 95-608 as it went through the House. Our thanks also to the Massachusetts House Delegation for their constant support, and especially to Congressmen Tsongas and Markey who co-sponsored the Act in the House.

PL 95-608 has been hailed as a milestone in Indian/United States government relations. The Commission sincerely hopes that the good will and understanding which went into creating and adopting this Act will continue and will mark a new and positive era in Indian/United States government relations.







# *The Commonwealth of Massachusetts*

## *Commission on Indian Affairs*

*John W. McCormack Building  
One Ashburton Place — Rm. 1004*

*Boston, Mass. 02108*

*Telephone 617-727-6394*

MICHAEL S. DUKAKIS  
Governor

WILLIAM G. FLYNN  
Secretary

JACOB THOMPSON  
Executive Director

October 31, 1978

The Honorable Paul H. Guzzi  
Secretary of the Commonwealth  
State House  
Boston, MA. 02133

Dear Mr. Secretary:

Pursuant to the provision of the General Laws, Chapter 30  
Section 33 as most recently amended by St. 1972 Chapter 757,  
Section 58, I submit herewith four bills recommended by the Commission  
on Indian Affairs for legislative action in the 1979 session  
of the General Court.

Sincerely,

*Jacob Thompson*

Jacob Thompson,  
Executive Director

Ms. Zara CiscoeBrough,  
Chairperson,  
Massachusetts Commission on Indian Affairs





# The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-NINE

## AN ACT

ESTABLISHING 30 FULL TUITION SCHOLARSHIPS FOR NATIVE AMERICAN INDIANS INDIGENOUS TO THE COMMONWEALTH OF MASSACHUSETTS OR OTHER ENROLLED TRIBAL MEMBERS WHO ARE RESIDENTS OF THE COMMONWEALTH OF MASSACHUSETTS FOR A PERIOD OF FIVE (5) CONSECUTIVE YEARS ATTENDING STATE INSTITUTIONS OF HIGHER LEARNING.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 69 of the General Laws is hereby amended by adding after Section 7E the following:

SECTION 7F: There are hereby established thirty (30) full scholarships to be given to qualified and eligible Native Americans indigenous to the Commonwealth of Massachusetts, or Native American Indians who are enrolled members of a Tribe who have been residents of the Commonwealth of Massachusetts for five (5) consecutive years, who meet the criteria established by the Board of Higher Education pertaining to financial need.

The Massachusetts Commission on Indian Affairs shall determine who is indigenous to the Commonwealth of Massachusetts or who is an enrolled member of a Tribe who has been a resident of the Commonwealth of Massachusetts for five (5)





ESTABLISHING 30 FULL TUITION SCHOLARSHIPS FOR  
NATIVE AMERICAN INDIANS.

consecutive years, and shall communicate this information to the Board of Higher Education.

Said scholarships shall be awarded by the Board of Higher Education to each person who qualifies for entrance to any institution of higher learning in the Commonwealth of Massachusetts.

The amount of such scholarships shall be equal to the amount of tuition, fees and course-related expenses charged by the institution attended. Such scholarships shall also include a stipend equal to the average amount awarded to students holding comparable scholarships within a given institution. Said scholarships shall continue for such time as the recipient thereof remains a student in good standing at such institution, but in no event shall any student receive such scholarship aid for more than four years. The Board of Higher Education shall establish such regulations defining financial need as a criterion for eligibility for these scholarships as it deems necessary, and said scholarships shall be payable by the Board of Higher Education from sums appropriated for scholarship programs.





# The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-NINE

## AN ACT

TO ESTABLISH INDIAN HOUSING AUTHORITIES.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 121B of the General Laws is hereby amended by adding thereto the following new Section 3B:

SECTION 3B Indian Housing Authorities.

(1) There is hereby created, in and for the Nipmuc, Mashpee, and Gay Head Wampanoag Indian Tribes, a public body, corporate and politic, to be known as the "Housing Authority" of each said Indian Tribe, which shall have and exercise all necessary legal powers to carry out low income housing projects for Indians; provided, that no such Indian Housing Authority shall transact any business nor exercise its powers hereunder until or unless the Tribal Council of the respective Tribe, by proper resolution, declares that there is a need for an authority to function therein.

(2) Each said housing authority shall be subject to and operate as provided in the statutes and regulations of the United States applicable to Indian





(2) Housing Authorities.

(3) Except as otherwise provided in this section, but only to the extent consistent with the statutes and regulations of the United States applicable to Indian Housing Authorities, each said Indian Housing Authority shall possess all rights, powers, functions and duties provided by this Chapter for local Housing Authorities, and each said Indian Tribe shall possess all rights, powers, functions and duties with respect to said Indian Housing Authorities, as are provided by this Chapter for municipalities with respect to local Housing Authorities, and may require periodic reports from the respective Housing Authorities.

(4) All powers of appointment and removal of members of such Indian Housing Authorities shall be exclusively exercised by the respective Tribal Councils, but members shall otherwise be appointed, removed, compensated and organized in the same manner for the same terms as are provided by this Chapter for Housing Authorities in cities.

(5) Neither the Commonwealth nor any Indian Tribe or Tribal Council shall be liable for any of debts, obligations or liabilities or any Indian Housing Authority; provided, that the Commonwealth or any Tribe may assume such liabilities under the same circumstances and for the same purposes as are provided by this Chapter for such assumption of liabilities by the Commonwealth and by municipalities with respect to local Housing Authorities.

(6) The area of operations of the Housing authority of the Nipmuc Tribe shall consist of Worcester County; the area of operations of the Housing authority of the Mashpee Tribe shall consist of Barnstable County; the area of operations



(6) of the Housing Authority of the Gay Head Wampanoag Tribe shall consist of Dukes County.

(7) The Housing Authorities of the Mashpee Tribe and the Gay Head Wampanoag Tribe may enter into a consortium board for the purpose of operations in the Wampanoag reservation in the Fall River-Freetown State forest, and shall thereupon be empowered to operate concurrently in said reservation as an additional area of operations.

(8) In addition to any other area of operations authorized by this Section, any two or more Indian Housing Authorities may enter into a consortium agreement and establish a consortium board for the purpose of operations in the City of Boston, and shall thereupon be empowered to operate concurrently in said City as an additional area of operations; provided, that projects undertaken pursuant to such agreement shall not be approved unless the agreement provides that the majority of members of the consortium board is nominated by the Boston Indian Council as the representative organization in the relevant service population:

(9) The operation of any Indian Housing Authority in any locality shall not affect or diminish the right or power of any other duly constituted Housing Authority to operate in such locality as authorized by this Chapter.

(10) Any two or more Indian Housing Authorities or consortium boards authorized by this Section may enter into agreements providing for joint planning, development, operation, management, or administration of any Housing programs or projects authorized by this Section.







Page four

AN ACT TO ESTABLISH INDIAN HOUSING AUTHORITIES.

SECTION 2. If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are so declared to be severable.





# The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-NINE

## AN ACT

GRANTING NATIVE AMERICAN INDIANS INDIGENOUS TO THE COMMONWEALTH OF MASSACHUSETTS OR OTHER ENROLLED TRIBAL MEMBERS WHO ARE RESIDENTS OF THE COMMONWEALTH OF MASSACHUSETTS FOR A PERIOD OF FIVE (5) CONSECUTIVE YEARS, FISHING, HUNTING, AND TRAPPING RIGHTS IN THE COMMONWEALTH OF MASSACHUSETTS AT NO COST.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Section 11 of Chapter 131 of the General Laws is hereby amended by inserting after the first paragraph of said section a new paragraph as follows:

No fee shall be charged for any license issued under this section to a Native American Indian who is certified by the Executive Director for the Commission on Indian Affairs as an enrolled member of a Tribe indigenous to the Commonwealth of Massachusetts or a Native American Indian who is an enrolled member of a Tribe who has been a resident of the Commonwealth of Massachusetts for five (5) consecutive years.

Such person shall present to the authorized licensing agent of the Director of fisheries and wildlife a certificate identifying him as having met the above criteria. Such certificate shall be issued by the Commission in a





FISHING, HUNTING, AND TRAPPING RIGHTS IN THE  
COMMONWEALTH OF MASSACHUSETTS AT NO COST

form approved by the Director.

Applications shall be subject to all other laws, rules and regulations  
pertaining to fishing, hunting and trapping in the Commonwealth.

SECTION 2 This Act shall take effect on January the first, nineteen  
hundred and eighty.





# The Commonwealth of Massachusetts

IN THE YEAR ONE THOUSAND NINE HUNDRED AND SEVENTY-NINE

## AN ACT

ESTABLISHING A FIVE YEAR MORATORIUM ON THE EXCAVATION OF  
KNOWN INDIAN BURIAL GROUNDS.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows.*

SECTION 127 of Chapter 9 of the General Laws is hereby amended by adding the following subsection 27D:

SECTION 27D. There shall be a five (5) year moratorium on the excavation of known Indian burial grounds for the purpose of permitting the Massachusetts Commission on Indian Affairs, and other appropriate state agencies to evaluate current practices and develop practices acceptable to the aforementioned agencies.

In the event of an inadvertent excavation of Indian burial grounds such specimens as are obtained therefrom shall be disposed of in accordance with procedures acceptable to the Massachusetts Commission on Indian Affairs and appropriate state agencies.

This amendment shall be in force for a period not to exceed five (5) years from the date of enactment of this act.

MEMORANDUM FOR THE RECORD

DATE: [illegible]

SUBJECT: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]



# Services to Native Americans Stepped Up

The needs of Lawrence's American Indian community are being assessed, and its problems addressed under a unique arrangement--the first of its kind in the state--involving the Boston Indian Council (BIC), the Massachusetts Commission on Indian Affairs (CIA) and the Greater Lawrence Community Action Council.

The latter organization is providing office space for an Indian desk staffed by Georgina Watkins, a representative of the BIC's community food and nutrition program in the Lowell-Lawrence region and a familiar figure to local Native Americans. The CAP agency is educating Watkins about their operation; in turn, she has assumed the role of liaison between that non-Indian group and her people to initiate, for the first time, direct delivery of human services, previously lacking because of inadequate outreach efforts. As an Indian serving other Indians,

Watkins is encouraging them to seek available help for education, employment, health and housing difficulties, commonly attributed to discrimination. The majority are reluctant to do so, for several reasons.

In a report prepared and presented by Jake Thompson, Commissioner of Indian Affairs, and John Ginnish, (CIA) resource development specialist, the plight of Lawrence's estimated 500 Native Americans is vividly described. Most have migrated to the city, attracted by a combination of employment opportunities, friends and close kinship ties. Accustomed to rural life, they are unable to cope with the pressures and demands of urban living. Feeling culturally out of place... lacking knowledge about or experience in dealing with human service agencies...confused by delays and the amount of paperwork involved...unwilling to ask questions for fear of being embarrassed...generally unable to comprehend what is expected of them...they suffer in silence. Most significantly, they shy away from agencies where few if any Indians are employed.

The Indian desk is the first major step in dealing with this dilemma. As the delegate agency, CAP is submitting a proposal on behalf of the Indian community to the Lawrence CETA Consortium for six slots--two outreach workers, secretary, program developer, census taker and counselor--under Title VI B. They will dispense the agency's available funds specifically earmarked for Indians and other Native Americans under Title III; nationwide, the figure for FY '78 is \$17 million.

A similar program is pending in Lowell, where Community Teamwork, Inc. (CTI), another CAP agency, has agreed to provide the Indian community with office space and support services. They will also submit a proposal to CETA for five PSE slots.

Lowell was actually the first site approached for an Indian desk. Christopher Muise, CIA liaison and a member of the Massachusetts Weatherization Policy Advisory Committee, visited CTI to determine how many Indians were being served by a Department of Energy weatherization program for low income people. He learned that the agency hadn't helped any Native Americans and, because of a shortage in its outreach staff, didn't

Vol. 1 No. 7

June/July 1978

# CETA READER

THE NATIONAL





know any were residing in the Lowell vicinity. Muise brought his findings back to CIA, where the idea of initially enlisting the cooperation of the Lowell and Lawrence CAP agencies in aiding Indians was born.

The arrangement is expected to be limited in scope, however. After a firm foundation is laid, the next step in a series will be interaction between the Lawrence and Lowell offices to avoid duplication of effort, and to insure that no one takes undue advantage of the program.

Ultimately, the Indians want to establish their own incorporated, centrally located organization by combining the Lawrence and Lowell desks while continuing to utilize existing delegate agency programs to achieve maximum impact from all resources. Hopefully, consolidation will make them eligible to receive core administrative funds from the Administration for Native Americans, HEW, which funds Native organizations servicing a population of 1000 people or more. They will also identify and secure other sources of funding with input from CIA. Both the commission and the BIC will offer technical assistance and training, with the latter conducting seminars at its offices under the auspices of the Administration for the Native American Grant. A census has also been proposed, to be undertaken in conjunction with CIA.

**“...unwilling to ask questions for fear of being embarrassed... generally unable to comprehend what is expected of them ...they suffer in silence.”**

The BIC and CIA see the proposed organization as a vehicle for the Native American community to organize, to assess and confront its own needs, and to become fully self-determining. Additionally, they want the association to be synonymous with the type of service delivery that is amenable to the Indian people, both in terms of their needs and their culture.

Inspired by the favorable response from the Lawrence and Lowell area, Christopher Muise will be contacting the state's 21 other CAP agencies to enlist office space and support services for American Indians. Northampton and Springfield have already agreed to the idea. And the Western Regional Department of Community Affairs--DCA is the source of CAP funds--has volunteered workspace for a CIA Western Regional office to coordinate the five proposed Indian desks in that region. Besides the Hampshire Community Action Council (Northampton) and the Springfield Action Council, they include: the Berkshire Community Action Inc. (Pittsfield); the Franklin Community Action Corp. (Montague), and the Community and Regional Opportunity Program in Chicopee. The CAAs are the new designated names for the CAP agencies.

Adequate human services delivery to Native Americans is long overdue.





# EXPLANATION OF THE PROVISIONS OF THE INDIAN CHILD WELFARE ACT OF 1978

P.L. 95-608

"The Indian Child Welfare Act of 1978" (P.L. 95-608) establishes nationwide procedures for the handling of Indian child placements and authorizes the establishment of Indian child and family service programs.

The Act applies to Indian child custody proceedings and includes foster care placements where the parent or custodian cannot have the child returned on demand, but where parental rights have not been terminated; in termination of parental rights proceedings, in pre-adoptive and adoptive placements. It does not apply to a placement based on an act which, if committed by an adult would be deemed a crime, or upon an award, in a divorce proceeding, of custody to one of the parents (Sec. 4(1)).

An Indian is defined as any person who is a member of an Indian tribe, or who is an Alaskan Native and a member of a Regional Corporation as defined in the Alaska Native Claims Settlement Act (85 Stat. 688.689) (Sec 4 (3)).

An Indian child means any unmarried person who is under 18 and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe (Sec. 4(4)).

An Indian child's tribe is defined as (a) The Indian tribe in which an Indian child is a member or eligible for membership or (b) in the care of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the most significant contacts (Section 4 (5)).

An Indian tribe is any Indian tribe, band, nation, or other organized group of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat.688,689), as amended (Sec. 4(8)).

Indian reservation means Indian country as defined in Section 1151 of Title 18, United States Code and any lands, not covered under such section, title to which is either held by the United States in trust for any Indian tribe or individual subject to a restriction by the United States Against alienation. (Sec. 4(10)).

## Title I

Title I of PL 95-608 contains evidentiary standards and notice and consent requirements for State courts adjudicating Indian child custody proceedings. Section 101(a) vests exclusive jurisdiction of such proceedings in the tribal courts in the case where the Indian child involved is residing or domiciled within a reservation except where such jurisdiction is otherwise vested in the State.





Section 101(b) requires that upon the petition of an Indian child's parent, Indian custodian, or tribe, any proceeding to establish a foster care placement or to terminate parental rights to an Indian child be transferred to the tribal court of the child's tribe in the absence of good cause to the contrary. Such a transfer would not occur if either of the parents objected or if the tribe declined jurisdiction. Section 101(c) gives the Indian child's tribe the right to intervene in any State court proceeding for the foster care placement of or termination of parental rights to an Indian child.

Section 101(d) extends to the public acts, records, and judicial proceedings in child custody proceedings of any Indian tribe the same full faith and credit as a State receives.

Section 102 requires the State, in the case of an involuntary child custody proceeding, to notify the parents, Indian custodian, if any, and the tribe of the Indian child involved by registered mail at least 10 days before the beginning of the proceeding. Any such party has twenty additional days, if requested, to prepare for the proceeding. In the case where the State is unable to locate the above parties, notice is given to the Secretary of the Interior and he then has fifteen days to provide such notice.

Section 102(b) of the Act gives any parent or Indian custodian of an Indian child who has been determined by the State court to be indigent the right to court-appointed counsel in a child custody proceeding. The court may appoint counsel for the child if it deems it to be in the child's best interest. The Secretary is responsible for payment of such counsel where the State makes no provision for it and would pay such fees out of funds which may be appropriated pursuant to the Snyder Act.

Sections 102(d), (e), and (f) set standards of evidence that a State court has to find before placing an Indian child outside of the home. First, the court must be satisfied that active efforts have been made to provide remedial and rehabilitative services to the family involved and that those efforts were unsuccessful. Then, in the case of a foster care placement, the determination of the court to remove the child must be supported by clear and convincing evidence that continued custody by the parent or custodian is likely to result in serious emotional or physical damage to the child. That evidence would have to be beyond a reasonable doubt in the case of a proceeding to terminate parental rights.

Section 103 sets forth the requirements that must be fulfilled in the case where a parent is consenting to the removal of the child from the home. This section requires that the presiding judge certify that the terms and consequences of the consent were fully explained to the Indian parent or custodian and that the consequences of the consent were understood. This includes assuring that the explanation was translated into the native language of the Indian involved, in the case where the individual does not understand English. The parents are able to withdraw their consent at any time before the final decree of adoption and for two years after the final decree if it is shown that the consent was obtained through fraud or duress.





Section 104 gives the Indian child, the parents or Indian custodian, or the tribe of the child the right to petition for invalidation of a foster care placement or a termination of parental rights if sections 101, 102, or 103 are violated.

Section 105 sets forth preferences to be followed when placing an Indian child under State law in an adoptive or foster care situation. Section 105 requires that preference in an adoptive situation be given to the child's extended family, then to other members of the child's tribe, and finally to other Indian families. This preference list is not a restrictive one, in that, if no appropriate placement is found among the groups listed, the Indian child may still be placed in another home. In the case of a foster care placement, preference must be given to an Indian foster home or institution before the child is placed in another setting. The child's tribe may change the order of preferences set forth in section 105, and where appropriate, the preferences of the Indian child and parent shall be considered. Records of efforts to comply with preferences and such records are available to the tribe and the Secretary.

Subsection (d) of Section 105 requires that the standards to be applied in meeting the preference requirements are the prevailing social and cultural standards of the Indian community.

Section 106 of the Act gives the biological parent or prior Indian custodian the right to petition for return of custody of an Indian child when a final decree of adoption has been vacated or the adoptive parents voluntarily terminate their parental rights. The child is to be returned to the petitioner unless the court finds that such a return of custody would not be in the best interest of the child.

Section 107 allows any Indian who has reached age 18 who was the subject of an adoptive placement, to find out his or her tribal affiliation and any other information that might be necessary to protect any rights flowing from that affiliation.

Section 108 sets forth the procedure that an Indian tribe must undergo if it has lost jurisdiction of child custody matters under P.L. 83-280 or any other Federal law, and it wants to reassume that jurisdiction. This includes preparing a plan for the reassumption of jurisdiction and submitting that plan to the Secretary of the Interior for approval. Section 108 also allows for partial retrocession of jurisdiction and section 109 allows the States and tribes to enter into mutual agreements regarding jurisdiction, thus allowing some flexibility.

Section 110 requires any State court to decline jurisdiction over the custody of an Indian child where the petitioner for custody has improperly removed the child from the custody of the parent or Indian custodian or has kept the child after a visit.

Section 112 states that nothing in title I of the enrolled Act shall be construed as preventing the emergency removal of an Indian child in order to prevent imminent physical damage or harm to that child.





Section 113 provides that except for sections 101(a), 108, and 109, none of the provisions of Title I shall affect a proceeding under State law which was initiated or completed within 180 days after the enactment of the Act, but does apply to a subsequent proceeding in the same matter or subsequent proceedings affecting the custody or placement of the same child.

Finally, section 114 contains an effective date for Title I of six months after enactment of the Act.

## Title II

Section 201(a) of title II gives the Secretary of the Interior the authority to make grants to Indian tribes and organizations for the establishment and operation of Indian child and family services programs on or near the reservations. The objective of these programs would be to prevent the breakup of Indian families.

Section 201(b) authorizes the use of funds appropriated under section 201(a) as the non-Federal matching share for Federal financial assistance programs which contribute to the purpose for which the original funds were authorized. The provisions of the Act are not to be a basis of denial of benefits for reduction of any assistance authorized under Titles IV B and XX of the Social Security Act or other Federally assisted programs. The section also provides that licensing or approval of foster or adoptive homes or institutions by an Indian tribe is deemed equivalent to State licensing or approval for purposes of qualifying for assistance under a Federally assisted program.

Section 202 gives the Secretary of the Interior the authority to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs. Section 203 gives the Secretary of the Interior authority to enter into agreements with the Secretary of Health, Education, and Welfare regarding the establishing, operating, and funding of the Indian Child and Family Programs. The Secretary of Health, Education, and Welfare is authorized under that section to use funds appropriated to HEW for similar programs.

## Title III

Title III sets up comprehensive record keeping requirements for Indian child placement proceedings. Section 301(a) requires the State court to provide the Secretary with a copy of the final decree or order of adoption of an Indian child plus information about the tribal affiliation of the child, the names and addresses of the biological parents and adoptive parents, and the identity of any agency having files or information relating to the adoptive placement. This information is not to be subject to the Freedom of Information Act.





Sec. 301(b) provides that at the request of an adopted Indian child over 18, the adoptive or foster parents of the Indian child, or the tribe in which the child may be eligible for membership, the Secretary is required to disclose information as may be necessary to determine eligibility for enrollment, or rights and benefits associated with tribal membership. In the case where the biological parent has requested anonymity and the child wants to establish a tribal membership, the Secretary is allowed to certify to the Indian child's tribe that the child's parentage and other circumstances entitle his or her enrollment in the tribe.

Sec. 302 provides for the promulgation within 180 days, rules and regulations within to implement the Act.

#### Title IV

Section 401 of title IV requires the Secretary of the Interior to prepare a report on the feasibility of providing Indian children with schools located near their homes. The Secretary is required to submit a report to Congress within 2 years of the date of enactment of the Act.

Special consideration is to be paid to providing educational facilities for children in the elementary grades.

Finally, section 402 requires the Secretary to send copies of the Act to the Governor, chief justice of the highest court of appeal, and attorney general of each State. Accompanying the Act, he is required to send the committee reports on the Act and an explanation of the provisions of the Act.



Respectfully submitted,

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